

## DEVELOPING PROOF

## A. Agricultural Marketing Act

The purpose of the Act is to provide for the voluntary inspection and grading of agricultural products, e.g., to "inspect, certify, and identify the class, quality, quantity, and condition of agricultural products." No person is required to use the services provided for in the Act.

The Secretary of Commerce has issued extensive regulations under the Act providing for the inspection, sampling, and grading of various commodities, and the issuance of licenses to perform such functions. This Act also provides the criminal penalties which may be assessed upon conviction for violations of the Act.

It is the responsibility of inspectors to check on reported irregularities and/or investigate alleged violations of the Act.

The Agricultural Marketing Act provides sanctions as follows:

"Whoever knowingly shall falsely make, issue, alter, forge, or counterfeit any official certificate, memorandum, mark or other identification, or device for making such mark or identification, with respect to inspection, class, grade, quality, size, quantity, or condition, issued or authorized under this section or knowingly cause or procure, or aid, assist in, or be a party to, such false making, issuing, altering, forging, or counterfeiting, or whoever knowingly shall possess, without promptly notifying the Secretary of Agriculture or his representative, utter, publish, or use as true, or cause to be uttered, published or used as true, any such falsely made, altered, forged, or counterfeited official certificate, memorandum, mark, identification, or device, or whoever knowingly represents that an agricultural product has been officially inspected or graded (by an authorized inspector or grader) under the authority of this section when such commodity has in fact not been so graded or inspected shall be fined not more than \$1,000 or imprisoned not more than one year, or both." (7 U.S.C. 1622(h)).

## B. Information Required Defined:

The following information should be helpful in establishing and reporting alleged irregularities and/or alleged violations. The chart lists the elements of the various offenses prohibited by Section 203(b) and the subsequent information describes the meaning of the various terms used in the law. Evidence is needed on one or more of the elements in each column as indicated.

1. Knowingly	<p>Falsely</p> <ol style="list-style-type: none"> <li>1. Make</li> <li>2. Issue</li> <li>3. Alter</li> <li>4. Forge or</li> <li>5. Counterfeit</li> </ol>	<p>Official</p> <ol style="list-style-type: none"> <li>1. Certificate</li> <li>2. Memorandum</li> <li>3. Mark or</li> <li>4. Other Identification</li> </ol>	<p>With respect to inspection, class, grade, quality, size,</p>
2. Knowingly	<p>Such False</p> <ol style="list-style-type: none"> <li>1. Cause</li> <li>2. Procure</li> <li>3. Aid</li> <li>4. Assist in or</li> <li>5. Be a party to</li> </ol>	<p>Quality or con-</p> <ol style="list-style-type: none"> <li>1. Making</li> <li>2. Issuing</li> <li>3. Altering</li> <li>4. Forging or</li> <li>5. Counterfeiting</li> </ol>	<p>dition issued or authorized under Sec. 203</p>
3. Knowingly	<p>Without promptly noti-</p> <ol style="list-style-type: none"> <li>1. Possess</li> <li>2. Utter</li> <li>3. Publish</li> <li>4. Use as true or</li> <li>5. Cause to be</li> </ol>	<p>Any such falsely made, altered, forged, or counter-</p> <ol style="list-style-type: none"> <li>1. Certificate</li> <li>2. Memorandum</li> <li>3. Mark</li> <li>4. Identification or</li> <li>5. Device</li> </ol>	<p>fyng the Secretary of Commerce or his representative</p>
4. Knowingly	<p>Represent that an agricultural product has been officially inspected or graded under the Act.</p>	<p>When it has not been so inspected or graded</p>	<p>b. Published</p> <p>c. Used as true</p>

1. Knowingly: Defendant's knowledge of the law is not required, but the defendant must have knowledge of the facts constituting the offense. Defendant is responsible only for intentional, rather than accidental or inadvertent, acts. For example, in order to establish the offense of false making of an official identification by use of an approved U.S. Grade A label on fishery products that had not been graded under the Act, proof would be needed to show that the defendant knew that the label was applied to non-graded fishery products, but it would not be necessary to show that the defendant knew that such application was illegal. If the label was accidentally or inadvertently applied, no offense was committed.

**Falsely Make:** Proof of falsity and proof of making must be shown. For example, to prosecute defendant for falsely making an official identification, it would be proper to prove that he applied an approved U.S. Grade A label to fishery products which had not been graded under the Act. Falsely making is deemed to include, among other things, manufacturing of official devices without authorization, inserting incorrect information in an

official certificate, and applying an official grade or inspection mark to fishery products which have not been graded or have not been inspected under the Act. The same activities may constitute falsely making and counterfeiting.

Falsely Issue: Issue means to put into circulation. The offense of falsely issuing is deemed to include the distribution of labels bearing official grade identifications by a label or box manufacturer to plants not eligible to use such labels when there is proof that the manufacturer knew that the labels would be used on products not eligible therefor.

Falsely Alter: Proof is needed of alteration and of falsity. For example, proof that the defendant altered an inspection certificate issued under the Act so as to show more product had been inspected or graded than was actually the case.

Forge: This offense consists of the false making or material altering, with intent to defraud, of any writing which, if genuine, might be of legal efficacy. For example, the writing of an inspector's signature on a certificate by someone other than the inspector himself and without his consent.

Counterfeit: This offense consists of the making of any official certificate, memorandum, mark, or other identification or device under the Act without authority. Proof is needed that the article made closely resembled and was represented to be, but was not, the genuine article and that the defendant made it without authority from this Department.

Official Certificates, Memoranda, Marks, other Identifications and Devices, The Act prohibits the offenses specified above only with respect to certificates, memoranda, marks, other identifications, and devices which are defined by the regulations under the Act as "official." (See 260.7 of the voluntary fishery products inspection and certification regulations.)

With Respect to Inspection, Class, Grade, Quality, Size, Quantity or Condition Issued or Authorized Under Section 203: The certificates, memoranda, marks, other identifications, or devices must relate to inspection, class, grade, quality, size, quantity, or condition and must be issued or authorized under Section 203 of the Agricultural Marketing Act.

2. Knowingly: See remarks under 1. For an offense in this group, there must be enough evidence to establish a false making, issuing, altering, forging, or counterfeiting of an official certificate, memorandum, mark, or other identification as discussed under 1., and proof that the defendant knowingly caused, procured, aided, assisted in, or was a party to such offense.

3. Knowingly: See remarks under 1.

Possess: Need proof that the defendant consciously had possession and did not promptly notify the Secretary of Commerce or his representative of such possession.

Utter, Publish: These terms mean about the same thing. Need proof that the defendant put into circulation or made public as genuine the offending article involved.

Use as True: Need proof of use by defendant under circumstances showing the offending article was represented to be genuine. For example, selling fishery products bearing pressure-sensitive stickers with counterfeit U.S. Grade A marks.

Cause to be Uttered, Published, or Used as True: Need proof of acts by the defendant which caused the utterance, publication, or use as true of the offending article. For example, a statement of an employee of the defendant that the defendant ordered him to apply pressure-sensitive stickers bearing counterfeit U.S. Grade A marks to non-graded fishery products and deliver them to a purchaser.

Falsely Made, Altered, Forged, or Counterfeited Official Certificate, Memorandum, Mark, Other Identification, or Device: See remarks under 1.

4. Knowingly: See remarks under 1.

Represent That an Agricultural Product Has Been Officially Inspected or Graded Under the Act: Need proof of such a representation with respect to fish and shellfish, and products thereof. The representation may be made in any way that conveys the idea to the public that the product was officially inspected or graded under the Act. For example, by label or sticker, retail store window sign or counter placard, store employee's statement or newspaper advertisement; and either by use of an official inspection or grading mark or by descriptive words. Report all the facts in these cases very precisely. Give exact words used that are deemed to constitute the representation. Obtain copies of labels, stickers, or advertisements if possible. Determine the quality of the fishery products under the United States standards or indicate that such a determination could not be made, in each case involving representation of grade. When it appears appropriate, purchase one or more packages of the product allegedly in violation. Do not remove or alter anything printed or written thereon. Hold product for future reference or evidence to be used in connection with a court action.

C. Typical Violations of the Agricultural Marketing Act

1. Advertising by trade periodicals, newspaper, or circular, U.S. inspected or graded fishery products when such products have not been so inspected or graded.
2. Using U.S. inspection or grade marks in connection with fishery products not so inspected or graded.
3. False alteration of official memoranda or certificates.

## INVESTIGATING ALLEGED VIOLATIONS

### A. Information Sources

To check on or investigate an alleged violation of the Agricultural Marketing Act, we must first have some indication that a violation has taken place. Such information can be developed in various ways. A common source is from someone in the fishery products business. Since the industry is highly competitive, it would be rare if any person or firm could operate in violation of the Agricultural Marketing Act for a long period of time without having their actions detected and reported to us.

On many occasions we may get valuable information from city, country, or state officials and officials of other Federal agencies, particularly those in the area of health and food control. Inspectors should make it their business to know these people and to be helpful to them in return for their help to us. Many good leads come from inspectors as a result of observations made in the course of their duties in official establishments and elsewhere.

Each irregularity or violation should be followed through. The preliminary investigation should be made in such a way that it will not be embarrassing to the person or firm suspected in the event that there is no foundation to the alleged violation. If an informant requests that his identity be kept secret, such a request must be strictly honored; otherwise, sources of information would disappear. In some cases, the informant may be an employee of the company which is the alleged offender and the situation should be handled in such a manner that his position would not be jeopardized.

Maintenance of good relationships with members of industry and the public is essential. Situations should never be permitted to develop where any of these contacts will be harmed without just reason. Investigations should always be conducted in such a manner as to avoid damage to the reputation of innocent persons.

The inspector should make sure that anyone who might be a potential source of reliable information knows him and knows where and how he may be reached. Regardless of how the information is presented, we should be sure they know our office address, phone number, and office hours.

### B. Interviews

Information discussed during an interview may be extremely important in the event legal action becomes necessary or is deemed appropriate. Therefore, information which will be of value as evidence should be recorded in the form of a written signed statement. Such a policy will protect the inspector against claims by witnesses of being misquoted or misunderstood and will fortify the witness in resisting pressure to alter his testimony.

Simple, clear-cut language, readily understood, and in words customarily used by the person making the statement should be used. Under no circumstances should intimidation, inducement,

or force of any kind be used against the subject of an investigation (or any other person) in order to obtain a statement. Methods of obtaining signed statements will vary with individual inspectors. Some will emphasize the importance to all involved that a true recital of the facts should be established and some will point out that this insures that the signer's side of the case will be accurately presented. Others will show by their very manner that they take it for granted that the subject would be willing to sign a statement of truth.

In the event the interviewee furnishes sufficient information for the preparation of a statement and afterwards declines to sign the statement, the unsigned statement should be retained for use in the report. Reasons for refusal to sign should be reported. Under no circumstances should an interviewee be provided with a copy of an unsigned statement. They may be provided with a copy of a signed copy upon request.

#### C. Proof of Violation

To secure successful prosecution, we must have proof of the alleged violation. This is often difficult to get, but without proof we have no case against the alleged violator. As an example, we cannot assume that fishery products were not federally graded and/or inspected; rather, we must prove that fishery products were not so graded or inspected. The Office of the General Counsel and the Justice Department will not take legal action unless there is good and sufficient evidence. The proof of a violation must be based on evidence. This may be in the form of personal observation, copies of invoices, bills of lading, freight waybills, cancelled checks, labels, sections of containers, receipts, receiver's statements, and statements made by those having knowledge of the facts. The more clearly this evidence proves that a specified amount of fishery products bearing official inspection or grade marks was not inspected or graded, the better the case.

## DEVELOPING THE REPORT

### A. Reports

The reporting of information developed in connection with an alleged violation is a very important phase of investigation work. Each and every step taken must be clearly documented and fully explained and spelled out in the report. Both positive and negative evidence must be included, otherwise, the reviewer may wonder, "Did he check on \_\_\_\_\_  
\_\_\_\_\_?"

Reports must be factual and based on observations and evidence and not on assumptions or opinions.

The inspectors' reports should be prepared in clean, neat, and grammatically correct manner. Just as people in the NMFS may form an opinion of the inspector from the appearance of the records he prepares, so people outside our organization will form an opinion of the NMFS from the documents we present. You can imagine the reaction of the Office of the General Counsel or a U.S. Attorney when reviewing a narrative containing incomplete sentences, misspelled words, erasures, and improperly documented evidence. Their interest in proceeding with a poorly presented case is reduced while a well-documented report will naturally bring better results.

The following self-examination shall be made in preparing a case file:

1. Is there sufficient evidence to support the allegation?
2. Does it include all the facts at hand?
3. Are there references to supporting documents in the narrative?
4. Are the narrative and other documents properly paragraphed? Margin neat? Correctly punctuated? Acceptably free of smudges and erasures? Properly assembled?
5. Have I correctly identified the legal and/or ownership status of the firm or person involved?
6. Have I checked references to names, addresses, dates, and numbers in different parts of the report so I am sure they are accurate and identical?

A complete case file on a violation should contain such information as the reason for the investigation, the manner in which the investigation was conducted, the evidence secured, and the conclusion of the inspector. The numbered exhibits in the file should be referred to by number as the report progresses.

## B. Writing Reports

"An investigation report may be generally divided into four parts or sections. These sections should be clearly defined either by headings or paragraphing."

"These sections can be generally categorized (1) Introduction and Justification, (2) Synopsis or Brief, (3) Details, and (4) Conclusions."

1. The opening paragraph of the report should contain the true and/or legal name and address of the person, partnership, company, or corporation under investigation. Citation of the statute or the regulation under which the investigation is being made should be shown. In case the individual or company does business under other names and at different addresses than its legal name and address, these should also be recorded.

2. A brief summary of the evidence as disclosed by the investigation is helpful to persons who are required to review reports. The synopsis or brief should be limited to one short paragraph where possible except that in the case of lengthy and complex reports, a longer brief may be necessary. In short reports dealing with relatively simple subject matter, the brief or summary may be eliminated. In no case, however, should the brief exceed the detailed reporting the case.

3. In the 'Details' section of the report, the Inspector should narrate in detail how he conducted the investigation and obtained evidence of the violation. Evidence per se is of the utmost importance in dealing with these violations but the methods by, which evidence is obtained is also important. In charging wrong-doings the burden of proof is on the Government. Therefore, extreme care should be exercised so that the person who is suspected shall not be deprived of rights guaranteed by the law and rigidly enforced by the courts.

In narrating the details of an investigation, the Inspector should refrain from imparting extraneous details and trivia which have no bearing on the issues. Reviewing reports loaded with details which are not germane can become extremely tedious and consequently the report may completely fail to inform the reader of the subject.

It is assumed that each inspector will assure himself that he can support any statements made by him in the report of investigation and such supporting evidence should be described and the resting place of such evidence should be carefully noted in the report, as in the work papers, etc.

4. Finally, the 'Conclusion' section of the report should relate the conclusions formed by the inspector on the basis of the evidence obtained during the investigation. Since the inspector is neither the prosecutor nor the judge, it is unnecessary to go into great detail as to the value of the evidence, but he can briefly describe his attitude toward the allegation based on the evidence.



### C. Sources of Information

#### 1. Commercial Bills of Lading, Shippers Certificates

Commercial bills of lading are excellent evidence that a product has moved interstate. This is especially true if we can also secure a copy of the delivery receipt.

#### 2. Copies of invoices, delivery receipts, order forms, and cancelled checks.

#### 3. Labels and master cartons from fishery products involved.

#### 4. Reference to letters of caution or correspondence establishing knowledge of the respective law violated.

If possible, two sets of all papers making up the file should be forwarded to the Washington office. Recommendations may be made by the inspector by a separate memorandum.

### D. Conclusion

We must bear in mind that each violation is different and the development of the investigation is different. We must also bear in mind our goal is to obtain compliance with the law and related regulations under which the inspection and grading program operates. As indicated previously, criminal and/or debarment action is usually reserved for those persons or firms who, by record, have knowledge of the provisions of the law referenced herein and who in turn subsequently with intent violate this law or regulation.

## REPORT FLOW

VIOLATIONS OF THE AGRICULTURE MARKETING ACT AND  
THE REGULATIONS GOVERNING PROCESSED FISHERY PRODUCTS

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